IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 42 of 1993

NEW INDIA ASSURANCE CO
V/S
JAWANA RAM

Mr. JAGDISH VYAS, for the appellant

Mr. RAJESH PANWAR, for the respondent

Date of Judgment : 8.2.2005

HON'BLE SHRI N P GUPTA,J.

J U D G M E N T

This appeal has been filed by the Insurance Company against the Judgment and Award of Motor Accident Claims Tribunal, Jodhpur dated 9.11.1992, decreeing the claim for a sum of Rs.75,000/-, along with interest @12% from 10.3.1992. Likewise, the claimants have filed cross-objection seeking enhancement of compensation.

The facts of the case are that, according to claim petition, on 31.7.87, at about 10.30 PM, deceased Smt. Kamla was going in jeep no.2285 towards Ramdeora. Near village Golasani, delinquent truck no.8211, which was carrying stone slabs, came from opposite direction, being driven rashly and negligently, and hit the jeep. As a result of which, deceased received severe injuries on the head and died, while being carried to hospital. According to the claimants, deceased was earning Rs.700/- per month by working as daily wager, and also doing the stitching work at the residence during the lay hours. The deceased was said to be aged 30 years. Inter alia all these facts, claim has been filed for Rs. 3,25,000/-, claiming different amount of compensation under different heads.

The owner and driver, being defendant nos.1 and 2 contested the

claim, contending that deceased was not doing work, was not earning any amount, and that truck in question was insured with the defendant no.3 for the period 31.7.87 to 31.7.89. It was also contended, that truck driver did not drive the truck rashly and negligently, rather the deceased was an old lady of 55 years. Thus the claim amount is exaggerated.

The insurer also contested the claim, pleadings inter alia, that the truck was insured with them for the period 31.7.87 to 31.7.88, but that cover note was collusively obtained from the agent after happening of the accident, and that amount of premium was deposited in the company on 4.8.87. Thus on the basis of these facts, it is sought to be contended, that at the time of accident, vehicle was not insured, and therefore, insurer is not liable. It was also contended, that the accident was result of negligent driving of jeep driver, and that the amount claimed is exaggerated. It was also contended that the truck was not being driven by person holding the valid driving license, nor was it driven under the control and for the benefit of the insured.

The learned Tribunal framed as many as five issues, apart from the issue relating to the relief. Issue no.1 was relating to negligent driving of truck driver, and happening of accident. Since the finding on this issue is not under challenged before me, I need not detain on that. Issue no.2 was relating to quantum of compensation, while issue no.3 was, as to whether the driver was holding the valid driving license or not, and that the truck was being plied without valid permit. Then issue no.4 was relating to as to the owner, insurer and driver of the jeep being necessary party, while issue no.5 related to the truck, being not driven under the control and direction of owner.

In other words, no issue was pressed to be framed comprehending the controversy about the cover note having been obtained clandestinely

from the agent after happening of the accident. Be that as it may.

The learned Tribunal while deciding the issue no.2, found the income of the deceased to be Rs.1500/-, and found the age of deceased to be 30 years, at the time of accident. However, the learned Tribunal awarded lump sum of Rs.50,000/-, and also awarded another sum of Rs. 20,000/- to all the four claimants for loss of consortium and love & affection, and another sum of Rs.5,000/- has been awarded for the expenditure incurred in transportation of dead body and performance of last rites. Issue no.3 was decided against the insurer by holding, that photo stat copies of license and permit have been produced, and issue no.4 has been decided on the basis, that the accident did not occur on account of negligent driving of jeep driver. Then issue no.5 was decided holding, that driver of truck Sohanlal has appeared in witness box and deposed to be in employment of employer for the last 6 years, as such, issue was decided against the defendants. As a result of aforesaid findings, the award of Rs. 75,000/- was passed.

Assailing the award, it was contended by learned counsel for the appellant, that in the present case insurance cover note was obtained clandestinely after happening of the accident, and on the same day, rather on 4.8.87, and was purported to have been issued on 29.7.87. According to learned counsel for the appellant, since premium was deposited in company on 4.8.87, according to provisions of Sec.64(V)(B), liability of the appellant did not commence. On the basis of this submission, it is contended that insurer could not be held liable.

I have considered the submissions, and have gone through the record, apart from the fact that no issue was framed on the controversy about the cover note having been obtained clandestinely from the agent after happening of the accident. What is significant to note is, that the issues were framed way back on 22.5.89, till conclusion of trial,

and at no stage, controversy was sought to be raised by the appellant. Not only this, as appears from the record, that after claimant's evidence was over, the case was posted for defendant's evidence, and in that sequence, it was on 17.8.92, that statement of DW-1 was recorded, and evidence of defence was closed, and case was posted on 1.9.92 for final arguments, whereupon appellant filed the application before the learned trial court on 9.9.92, contending that with the closure of the evidence of owner, evidence of insurer has also been closed, while the insurer has produced the policy, which has not been admitted by the claimants, and therefore, in the interest of justice, insurer should be given an opportunity to lead its evidence and prove the policy.

Thus the evidence was sought to be reopened by the insurer, only for the purpose of proving the insurance cover, produced by it on record. However, since the owner had admitted the cover, it was not necessary to allow the appellant to lead the evidence, to prove the cover. The obvious consequence is, that even till the last, appellant never desired to lead any evidence on the question about, the insurance cover having been obtained clandestinely from the agent, after happening of the accident, nor for the purpose of leading the evidence to prove, that premium was deposited with the company on 4.8.87. With this, a look at Insurance cover note, produced on record, being Ex. A/1 shows, that it purports to cover the risk for the period 31.7.87 at 5.00 AM to 30.7.88, and purports to have been issued on 29.7.87. Time of commencing of risk has been specifically mentioned to be 5.00 AM of 31.7.87. In order to satisfy the conscience of the court, during the course of hearing, learned counsel for the appellant was asked, as to whether the insurer has taken any departmental action against the agent concerned during all these periods, but learned counsel expressed his inability to inform any answer to this query.

In these circumstances, it cannot be said, that the appellant is

not liable, despite having issued the policy Ex.A-1. The appeal of the insurer, thus has no force, and is hereby dismissed.

Coming to the cross-objections, it is contended by learned counsel for the claimants, that when the Tribunal has found the age of deceased to be 30 years, and income of deceased to be Rs. 600/- per month, the Tribunal in a wholly arbitrarily manner has assessed the compensation at Rs. 50,000/- only, while the compensation was required to be calculated according to parameters laid down in second schedule appended to the Motor Vehicles Act. This proposition has not been opposed from the side of appellant either.

In that view of the matter the compensation is required to be calculated at an appropriate figure on the parameters laid down in the second schedule appended to the Motor Vehicles Act. In view of the findings of the Tribunal, which are not under challenge before me, as the deceased has been found to be of the age of 30 years at the time of accident the multiplier of 17 is required to be applied, then from out of the income found, being Rs. 600/- p.m., a deduction of 1/3rd is required to be made for her personal expenditure, and if so calculated, it comes to Rs. 600x12x17x2/3 = Rs. 81,600/-.

Accordingly, cross-objections are partly allowed, and the amount of compensation of Rs. 50,000/- as awarded by the Tribunal, is enhanced from Rs.50,000/- to Rs. 81,600/-. The other amounts awarded are however maintained. The amount as awarded by the tribunal has already been paid, as such, this enhanced part of amount shall carry interest @6% per annum from 10.3.92, as determined by Tribunal.

The parties shall bear their own costs of this appeal.

(N P GUPTA),J.

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